

Article

Video Identification of Suspects: A Discussion of Current Practice and Policy in the United Kingdom

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Abstract Procedures for eyewitness identification of suspects in the United Kingdom must adhere to the Police and Criminal Evidence (PACE) Act Codes of Practice. These Codes stipulate what methods can and cannot be used, what must be said to eyewitnesses before the procedure, and how procedures must be constructed. Our approach has been two fold. The first has been to contact all police forces in England, Wales and Northern Ireland to obtain copies of the protocols followed when they conduct identification tests. The second has been to review evidence from the psychological literature on a range of factors that can influence outcomes on eyewitness identification tests. We make several recommendations that would bring PACE in line with research-based best practice, including mandatory single-suspect procedures, blind administration, and systematic recording of eyewitness confidence. The technology and the structure of specialist identification suites in the UK would allow each of the recommendations to be implemented effectively and inexpensively.

Introduction

Protocols for conducting identification procedures vary between countries and even across jurisdictions within some countries, such as the USA. This article will focus on the current procedures used in the UK, where the collection of eyewitness identification evidence is regulated by the Police

and Criminal Evidence (PACE) Act Codes of Practice. However, the topics considered within this paper are relevant to all jurisdictions where identification evidence is used as part of the criminal justice system. This paper will evaluate current UK procedures for collecting eyewitness identification evidence and provide recommendations for improvements to these procedures.

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In a recent assessment of police identification procedures in the UK, we examined all protocols and policies concerning identification procedures from the 43 forces that make up the Police Service in the UK¹. In addition, we attended user group meetings in order to discuss issues surrounding video identification at a national level. We also held a workshop with the identification inspectors responsible for all identifications across the UK, Association of Chief Police Officers (ACPO) representatives, and Home Office officials. We aimed to standardize procedures across the country and to recommend evidence-based improvements to existing procedures.

The PACE Act Codes of Practice specify how identification evidence must be collected in the UK². The Codes are updated regularly as a result of recommendations from the Law Society, ACPO, and the Police Powers Unit at the Home Office. This article is based upon the current version of the relevant Code (Code D), effective as of March 2011 (accessible online at <http://www.homeoffice.gov.uk/publications/police/operational-policing/pace-codes/pace-code-d-2011>, as of 4th February 2013).

The Codes specify three principal methods that can be used to collect identification evidence: video identifications (in which moving images of the suspect and known-innocent volunteers are seen), identification parades (in which the suspect stands in a line alongside known-innocent volunteers), and group identifications (in which the suspect is seen in an informal group of people). The Codes state that a video identification should be offered unless an identification parade or group identification is more suitable or practicable. This article focuses on video identification procedures

(VIPs), though many of the recommendations apply also to live and photographic identifications, commonly used in other jurisdictions.

There are many identification suites across the UK that specialize in constructing and administering VIPs. VIPs consist of a series of video clips, each showing the head and shoulders of one individual. In each fifteen-second clip, the individual looks directly at the camera before turning to show each profile. All VIPs must include at least eight volunteers in addition to the suspect. Each clip is seen individually and the suspect can be placed in any position in the VIP. Under PACE, eyewitnesses must see the entire VIP *twice* before making a decision, and they can request to see the images as many times as they wish. If an individual is selected, the eyewitness is shown that particular video clip again to confirm the identification.

Our recommendations are based on laboratory research involving staged crimes (live or videotaped). There are two components to eyewitness identification accuracy: identifying a guilty suspect and not identifying an innocent suspect. Therefore, most laboratory studies include identification tests in which the culprit is present *and* identification tests in which the culprit is absent.

Laboratory research helps us to determine which factors make certain responses more or less likely (Wright, 2006). However, laboratory studies differ from real eyewitness experiences in several ways: in the levels of threat and anxiety experienced by eyewitnesses; in the delay between the crime and the identification procedure (typically much shorter in the laboratory than in the field); in the events leading up to the identification procedure (recording of statements, police interviews, producing composites of the culprit, etc.); and in the consequences

¹ Though the PACE Codes mandate many aspects of identification procedures, there are other aspects that are not included in the Codes, including the exact wording of instructions given to witnesses prior to the procedure and the recording of witness confidence. Thus these are open to interpretation across police forces in the UK. Our aim in collecting information on current practice in each police force was therefore to see whether issues that are outside the scope of the Codes are handled differently across the country.

² Though not legally binding in Scotland, Scottish procedure shares many commonalities with procedures in England, Northern Ireland, and Wales

attached to the identification decision. Therefore, we also consider data from real eyewitnesses in the UK, which indicate that around 20–40% of procedures result in a volunteer identification (e.g. [Horry et al., 2012a](#), [Memon et al., 2011](#), [Valentine et al., 2003](#), [Wright and McDaid, 1996](#)).

Evaluation of UK procedures

We now consider which factors influence eyewitness reliability, making recommendations for change when warranted by the research evidence. We order this discussion chronologically, beginning with factors that are important before the eyewitness sees the VIP (construction of the procedure, instructions to eyewitnesses, dealing with multiple eyewitnesses). We then discuss the conduct of the VIP (administrator influence, presentation format, repeated viewing), followed by the factors that become important after the procedure (recording of confidence, feedback to the eyewitness).

Before the identification procedure

Construction of the identification procedure. How many suspects should be included in a VIP? If there are two suspects of similar appearance, the Codes allow both to be placed in a single VIP along with at least 12 volunteers. From our discussions with police officers, it seems that multiple-suspect VIPs are commonly used, yet they create several problems. Firstly, how does one determine whether two suspects are similar enough to be included in the same procedure? Secondly, how does one select appropriate volunteers to ensure that the VIP is equally fair to both suspects? Thirdly, including more than one suspect in a line-up increases the probabilities of an eyewitness making a harmful error ([Wells and Turtle, 1986](#))³.

The computer-based systems used in the UK have large databases of video clips, making it possible to create separate VIPs for each suspect. Many officers who attended our workshop were supportive of procedural changes to enable separate VIPs where there are multiple suspects.

Recommendation 1: Identification procedures should only include one suspect. In cases with multiple suspects, each suspect should be placed in a different procedure with unique volunteers.

What constitutes a fair identification procedure? Researchers agree that a fair identification procedure is one in which the suspect does not stand out. In the laboratory, fairness is usually assessed using the *mock witness* method ([Doob and Kirshenbaum, 1973](#)). Participants who have not seen the culprit read a description of the offender and are asked to pick the best match from the identification procedure. If the identification procedure is fair, the suspect should be picked at chance levels. [Valentine and Heaton \(1999\)](#) compared the fairness of 25 real live identification procedures and 16 real VIPs, and found that the VIPs were fairer than the live identification procedures.

How should volunteers be selected? PACE requires that VIPs include at least eight volunteers who ‘so far as possible resemble the suspect in age, general appearance, and position in life’ (PACE Code D, Annex A, *paragraph 2*). However, the assessment of resemblance between a suspect and a volunteer is subjective and raises the question, how similar is similar enough? [Luus and Wells \(1991\)](#) argued that volunteers should be selected to match the eyewitness’s description of the culprit, rather than the appearance of the suspect. They argued that description-matching bypasses subjective judgments of similarity while ensuring a fair

³ Suppose there are two suspects who are both innocent. If a witness is choosing at random from the nine videos, the probability of a false positive in *either* parade is about 23%. If randomly choosing 2 videos from 12, the probability of choosing *either* suspect is 32%. However, this assumes that witnesses are not using the ‘not there’ option and use of this option may vary between single- and multiple-suspect VIPs. There is not enough research to know about the differences in how witnesses approach these two procedures.

identification test. However, the research has been equivocal. Some studies found that description-matched procedures lead to more correct identifications and fewer incorrect identifications than appearance-matched procedures (e.g. Wells *et al.*, 1993), while others have found no difference between the two methods (Darling *et al.*, 2008). Given the inconsistent findings in the literature, we do not recommend a change to PACE at this time. Unless further research can reconcile these disparate findings, it is unlikely that a recommendation will be made in the near future.

What happens when the suspect has a distinctive feature (e.g. a scar or tattoo)? Under PACE, identification officers can conceal the feature on the suspect or replicate the feature across all volunteers. The Codes recommend that a feature should be replicated if it was described by the witness, or concealed if it was not described (PACE Code D, Annex A, *paragraph 2A*). Our discussions with police officers revealed that concealment is the preferred method in practice, because it is less costly and time consuming than replication. In fact, many police forces did not use replication at all. Only one study has addressed the issue, finding that replication produces twice as many correct identifications as concealment (Zarkadi *et al.*, 2009). Without further research, we can make no recommendation at this time. However, this issue should be revisited when further research has been conducted.

Instructions to eyewitnesses. Eyewitnesses bring with them assumptions about what the task involves and what is expected of them. The instructions provided before an identification procedure can affect the eyewitness's expectations and willingness to choose. Unless eyewitnesses are explicitly told that the culprit may not be present in the identification procedure, they may assume that the police have arrested the culprit and their job is to pick the culprit from the procedure (Malpass and Devine, 1981). An example of the briefing given to eyewitnesses from one police force was as

follows: 'I want to make it clear to you that not only is there a suspect on this visual recording, but also eight people who cannot have been involved.' However, an eyewitness may assume the suspect *is* the culprit, leading them to identify the best match to their memory even if the match is not good. Officers should explicitly remind eyewitnesses that the culprit may or may not be present immediately prior to seeing the parade (and prior to a repeated viewing).

PACE stipulates that 'if they (the witness) cannot make a positive identification, they should say so' (PACE Code D, Annex A, *paragraph 11*). But what does 'positive identification' mean? Hughes (2005) interviewed 30 identification officers and noted a large disparity in responses with every officer having a different understanding of the term. If police officers are confused about the term 'positive identification', then eyewitnesses, too, are likely to vary in their interpretations of the term. We recommend that instructions to eyewitnesses be clarified to explain the purpose of the identification procedure, and that the word 'positive' be removed from the instructions. Instead, eyewitnesses should simply be asked if they recognize the person they saw at the scene of the crime. Feedback from officers suggested that this change would be supported. We noted during the review that a number of forces had already removed the term *positive* from their instructions to eyewitnesses.

Recommendation 2: A standard set of instructions is needed to ensure consistency. The word 'positive' should be removed from the PACE Code D guidelines Annex A paragraph 11. Eyewitnesses should be explicitly reminded that the offender may or may not be present immediately before viewing the VIP.

Multiple eyewitnesses. Many crimes are witnessed by multiple eyewitnesses, and eyewitnesses who discuss an event face-to-face, over the phone, or via social media may change their memory reports to be more similar to each other. This is called

memory conformity (Wright *et al.*, 2009), and it occurs because memory is reconstructive. Every time we remember something, we reconstruct that memory, and we may change it in some way to incorporate information from other sources. While identification officers cannot prevent communication among eyewitnesses, they can ask eyewitnesses about the extent of their contact with other eyewitnesses involved in the case (Wright *et al.*, 2009). We recommend that such questions become standard procedure in all cases.

Recommendation 3: Identification officers should ask whether there were any other eyewitnesses to the crime. If yes, officers should ask i) whether the eyewitness discussed the crime with any other eyewitnesses; and ii) what was discussed. Relationships among eyewitnesses should also be recorded as well as any discussions or interactions on social media sites.

During the procedure

Administrator influence. Social psychologists have long acknowledged that researchers may inadvertently influence the outcome of their experiments by passing on cues to their participants (Rosenthal, 1966). Such *expectancy effects* can occur in a wide range of domains. For example, Seboek and Rosenthal (1981) discussed the case of Clever Hans, a horse that was once believed to be able to calculate the answers to mathematical problems. This claim was discredited when it was shown that the horse was actually picking up on subtle cues from the audience to produce the desired response. Brohpy and Good (1970) found that school children tended to do better if teachers had higher expectations of them because the teachers interacted with these students differently, unconsciously communicating their expectations to the students. However, there is a simple way to eliminate expectancy effects: no one involved in the interaction should know what the expected outcome is. This is called a double-blind design.

The PACE Codes state that ‘care must be taken not to direct the witness’ attention to any one individual image or give any identification of the suspect’s identity’ (PACE Code D, Annex A, paragraph 13). However, VIP administrators may not be aware of their behaviour and may influence an eyewitness without realizing it. A slight pause, a raised eyebrow, a brief smile—all of these things could be interpreted by an eyewitness as an indication of the suspect’s identity. Consider the game of poker. A player tries not to convey to others that their hand of cards is good or bad, yet other players pick up on ‘tells’ that convey whether the player is bluffing. These subtle cues are what make poker more than a game of chance and applied statistics.

The use of specialist identification suites in the UK offers ample opportunity for double-blind VIPs at little cost, using several possible methods. One option is to ensure that the identification officer who administers the VIP is not the same officer who constructs the VIP, so that he/she can remain naïve as to the suspect’s identity. Alternatively, several versions of the VIP can be created, differing only in the order of the images. A version of the procedure can then be selected at random so that the identification officer does not know the location of the suspect (Valentine, 2006). Finally, complete computer automation of the procedure would eliminate any possibility of administrator influence (see Wells *et al.*, 2011, for an example).

Recommendation 4: The identification officer responsible for conducting the procedure should be unaware of the identity of the suspect and their position in the procedure as should all personnel present during the conduct of the procedure. The eyewitness should be clearly informed of this. A move towards the fully automated administration of procedures would be desirable.

Presentation format. When identification procedures were live, the suspect and volunteers would be presented simultaneously to the eyewitness.

However, VIPs naturally result in sequential presentation, with each image being seen individually. Furthermore, the PACE Codes state that eyewitnesses must view the entire set of images *twice* before reporting a decision. Thus, we must ask whether identification accuracy is affected by: i) sequential presentation of images; and ii) withholding of the response until the end of the procedure.

There is much laboratory research regarding sequential versus simultaneous presentation of images in identification procedures (Stebly *et al.*, 2011). On the whole, the data suggest that sequential presentation reduces the number of false identifications of innocent suspects at a slight cost to correct identifications. The procedure used in the UK, however, differs from the sequential procedure used in the laboratory. PACE stipulates that the eyewitness must withhold a decision until the procedure has concluded and all images have been seen twice. What effect could this have on eyewitness decisions? Forcing a witness to withhold a response denies investigators access to some potentially useful cues as to the accuracy of the eyewitness. For example, studies have found that fast responses are more likely to be correct than slow responses (Brewer *et al.*, 2006)—especially when asserted confidently (Sauerland and Sporer, 2009). If an eyewitness is not allowed to respond as soon as they recognize an individual (as is current practice), investigators cannot take advantage of this decision speed–accuracy relationship. Furthermore, officers revealed to us that eyewitnesses were often reluctant to wait until the end of both viewings before responding. However, little research has compared PACE-compliant procedures with the types of sequential procedures used in the laboratory, so we are unable to make any recommendations at this time (though see Wilcock and Kneller, 2011). This issue should be revisited when relevant research becomes available.

Repeated viewing. At the end of the VIP, PACE requires that eyewitnesses are given the

opportunity to see any or all of the images again. However, two surveys of real eyewitness identification decisions have found that eyewitnesses who request additional viewings make more errors (volunteer identifications) than eyewitnesses who do not (Memon *et al.*, 2011, Horry *et al.*, 2012a). In fact, Horry *et al.* (2012a) found that eyewitnesses who requested an additional viewing were as likely to identify a volunteer as they were to identify the suspect, while eyewitnesses who did not request an additional viewing were about 2.5 times more likely to identify the suspect than a volunteer.

Without data from controlled laboratory studies, we cannot recommend that the opportunity for repeated viewing is dropped from PACE. However, there is a risk that eyewitnesses who are uncertain of their own memories may request additional viewings, and will go on to make an identification that is unreliable. We therefore recommend that any additional viewings are recorded and that eyewitnesses are reminded that the culprit may not be present before viewing the images again. Many identification officers were supportive of this suggestion during our consultations with them. We encourage researchers to address this issue further, such that this recommendation can be revisited at a later date.

Recommendation 5: Requests to view any images again should be recorded, including any comments made by the eyewitness.

Recommendation 6: At the end of the second viewing of the procedure, all eyewitnesses should be reminded that the culprit may or may not be present in the procedure.

After the procedure

Recording confidence. Psychologists have searched for markers that will help investigators and prosecutors to assess whether an eyewitness's decision is likely to be correct or incorrect. One such marker is the confidence in the decision. Identifications made with higher confidence are

generally more likely to be accurate, although overconfidence can result in eyewitnesses who are certain but wrong (Brewer and Wells, 2006). One reason for overconfidence is that the confidence expressed by an eyewitness can be inflated by exposure to feedback implying that the decision was correct. Feedback can also change eyewitnesses' reports of how much attention they paid to the culprit, how good their view was, how easy they found the identification task, and so on (Douglass *et al.*, 2010).

Our discussions with officers revealed that eyewitnesses in some suites are routinely asked for confidence statements, but not in others. Furthermore, in some suites, eyewitnesses are routinely given feedback about their decision. Failing to record confidence at the time of the decision and providing feedback is a dangerous combination that can make an unreliable eyewitness appear confident and persuasive in front of a jury. Wright and Skagerberg (2007) found that real eyewitnesses in UK identification suites who were told that the identified person was the suspect were more likely to say they found the decision easier than witnesses who were not told this.

Recommendation 7: A statement of confidence should be taken immediately after the decision, before the eyewitness has any chance to learn whether they identified the suspect.

Summary of recommendations and conclusions

We have critically evaluated current UK procedures for collecting eyewitness identification evidence. We have drawn on informal surveys and discussions with police forces across the UK, as well as field data and the scientific literature, to provide seven recommendations for improvements to PACE, which regulates all formal identification procedures in the UK. Below we rank these recommendations based on: i) the weight of evidence

from the scientific literature; and ii) the ease of implementation.

1. The identification officer who conducts the procedure should not know the position of the suspect within the procedure.
2. Identification procedures should only include one suspect.
3. After the mandatory second viewing of the lineup, eyewitnesses should be reminded that the culprit may or may not be present in the procedure.
4. A statement of confidence should be taken immediately after the identification decision, before the eyewitness has any opportunity to learn whether they identified the suspect.
5. The term 'positive identification' should be removed from PACE Code D, and a standardized set of instructions should be produced to ensure consistency between police forces.
6. Eyewitnesses should be asked whether they have had any discussions with other eyewitnesses or interactions on websites (e.g. Facebook).
7. Requests to see any images again should be recorded, along with any comments made by the eyewitness.

The centralized structure of policing in the UK affords opportunities for rapid change that can keep pace with the most up-to-date technology and research, and PACE can ensure that procedures are consistent nationwide. The UK model stands in stark contrast to the decentralized model of policing in the USA, where changes to identification procedures have been slow and inconsistent (see Horry *et al.*, 2012b, for a fuller discussion of eyewitness identification reform across the two countries). UK policy makers are in an excellent position to ensure that eyewitness identification evidence is collected consistently and fairly across all police forces.

We focussed on factors that are directly relevant to the conduct of an identification procedure.

There are many other factors that can influence the reliability of an eyewitness—for example, the viewing conditions at the time of the crime, the age of the eyewitness—that are outside the scope of this article. Advances in technology are presenting police with a wide new range of issues to consider—among them, the potential use of social networking sites to identify suspects. Issues around these new technologies are largely unresearched. Other considerations that could not be discussed here include whether an identification procedure is held, and how eyewitness evidence is used within a criminal investigation. These issues are dictated by the law. For example, in the UK, a formal identification procedure must be held whenever there is an issue of disputed identity. The use of eyewitness identifications as evidence varies even within the UK. In Scotland, eyewitness evidence must be corroborated (though corroboration may come from another eyewitness), but this does not apply in the rest of the UK.

We conclude by encouraging collaboration among policy makers, police practitioners, and social scientists to ensure that identification procedures are effective at gathering accurate and informative evidence. By following simple guidelines like those discussed here, the reliability of eyewitness identification evidence can be improved.

Acknowledgements

This research was funded by ESRC grant RES-000-22-3419. We thank all the police forces in England, Wales, and Northern Ireland who participated in our research.

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